APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2718
No. 81-5142

UNITED STATES OF AMERICA

v.

JAMES M. CANINO,

Appellant

(Criminal No. 80-0082-01—D.N.J.—Newark)

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, *Circuit Judges*, STAPLETON, *District Judge.**

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ Seitz
Chief Judge

Dated: May 24, 1982

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* Walter K. Stapleton, Judge of the United States District Court for the District of Delaware, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-5142

UNITED STATES OF AMERICA

v.

JAMES M. CANINO,

Appellant

(Criminal No. 80-0082-01 D.N.J.—Newark)

Submitted Under Third Circuit Rule 12(6)
April 13, 1982

Before: SEITZ, *Chief Judge*, ADAMS, *Circuit Judge*, and STAPLETON *District Judge.**

JUDGMENT ORDER

After consideration of the contentions raised by appellant, to-wit, that (1) exculpatory evidence was unconstitutionally withheld from defendant, (2) the "spill-over" effect requires a new trial on all issues, and (3) under the facts at bar, the reference to regional funding in the H.F.A. audit papers is newly discovered, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

By the Court,

/s/ Seitz
Chief Judge

ATTEST:

/s/ Sally Mrvos
SALLY MRVOS
Clerk

Dated: Apr. 14, 1982

* Walter K. Stapleton, Judge of the United States District Court for the District of Delaware, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2718

UNITED STATES OF AMERICA

v.

JAMES M. CANINO,

Appellant

(Criminal No. 80-0082-01—D.N.J.—Newark)

Submitted Under Third Circuit Rule 12(6)
April 13, 1982

Before: SEITZ, *Chief Judge*, ADAMS, *Circuit Judge*, and STAPLETON *District Judge.**

JUDGMENT ORDER

After consideration of the contentions raised by appellant, to-wit, that (1) the instruction which was given to the jury concerning the amount of persuasion or conviction which it must have of the truth of the charges in order to find defendant guilty was plain error. Therefore, the new trial motion should have been granted, (2) the jury charge on the element of specific intent as it pertains to ignorance of the law was improper, (3) the court's charge relating to regional funding contracts was prejudically erroneous because it failed to include the element of deception as a required element of the alleged crime, (4) the court erred in allowing into evidence

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* Walter K. Stapleton, Judge of the United States District Court for the District of Delaware, sitting by designation.

non-applicable accounting principles. The appearance of what erroneously purports to be an inculpatory standard was prejudicial to the defendant and the court erred in charging that the legal non-disclosure of regional funding could be used to prove intent to defraud, (5) the jury did not receive proper instructions relating to the elements of the crime of conspiracy, (6) the court erred in instructing the jury as to the exposure of the defendant for being liable as an aider and abettor, (7) failure to disqualify Donald M. Horowitz, Esquire, as attorney for defendant deprived defendant of effective counsel, (8) the statements of Raphael were improperly admitted without a proper threshold finding of a conspiracy, (9) the court's failure to instruct the jury of the nature and theory of the defense was prejudicial error, (10) failure of the court to charge a specific mens rea as an element of 18 U.S.C. 1962(C) is reversible error, and (11) prosecution of defendant, Canino, under the totality of the circumstances at bar, was a violation of his due process rights, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

By the Court,

/s/ Seitz
Chief Judge

ATTEST:

/s/. Sally Mrvos
SALLY MRVOS
Clerk

Dated: Apr. 14, 1982

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Criminal No. 80-82

UNITED STATES OF AMERICA,

vs.

JAMES M. CANINO,

Defendant.

TRANSCRIPT OF PROCEEDINGS

MOTION

Newark, New Jersey
February 26, 1982

Before:

THE HONORABLE H. CURTIS MEANOR, U.S.D.J.

Appearances:

W. HUNT DUMONT
UNITED STATES ATTORNEY
By: RALPH JACOBS
Assistant United States Attorney
For the Government

MARGULIES & MARGULIES, P.A.
By: SEYMOUR MARGULIES, ESQ.
Attorneys for the Defendant

THOMAS F. BRAZAITIS, C. S. R.
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

P.O. Box 397
Newark, N.J. 07101

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[53] MR. CANINO: No.

MR. MARGULIES: No. We really are looking at the bull's eye when we are talking about Regional, sir. I mean, realistically that's the case. Not just technically. Thank you, sir.

THE COURT: Let me take a recess and I'll decide this thing in about five minutes.

(A brief recess is taken.)

THE COURT: Mr. Jacobs, there was some evidence about the N.J.H.F.A. having a policy against related party transactions in these projects. Who did that come from?

MR. JACOBS: I believe Kathleen O'Kenica—

THE COURT: The young lady that testified?

MR. JACOBS: I sought to examine her at some length about the prohibition. I think your Honor precluded that line of testimony.

There may have been a few questions along that line, sir.

THE COURT: All right, gentlemen, this is a motion by James M. Canino for a new trial.

Mr. Canino was convicted, to my recollection, about eleven months ago on, I think, seventeen counts of nineteen counts that went to the jury.

I'm a little handicapped in the precise [54] details because there is an appeal pending and the file of this court is now residing with the Third Circuit. The details I'm missing, however, are not in any way necessary to the resolution of the present motion.

I think the law with respect to my permitted ambit of activity is well settled. I cannot grant the new trial at this juncture. That would destroy the appeal and I cannot destroy the subject matter of an appeal pending before the Third Circuit.

I can deny the motion for a new trial, which will not have any effect on the pending appeal, except that an appeal probably will be taken from such denial and joined with the main appeal.

I can also indicate that if free to do so the motion for a new trial would be granted thus to permit Mr. Canino, through counsel, to request a remand from the Court of Appeals so that the motion for a new trial can be granted and a new trial take place.

I don't think anyone disputes that recitation of the applicable legal rules.

Mr. Canino was indicted here along with Mr. Raphael in various counts of mail fraud and under the RICO statute.

The case centered around a project in, I believe, West New York called Parkview Towers.

[55] Parkview Towers was to be erected largely with a loan procured from the N.J.H.F.A. There was, as I understand it, a limited partnership, and the general limited partners also had an investment in the construction of Parkview Towers.

Messrs. Canino and Raphael were essentially in control of Parkview Towers. I believe they were the general partners, or the principal general partners.

A.J. Tenwood was the general contractor for the Parkview Towers project. Also a Raphael-Canino company.

Fraud was alleged by the government in three particulars: The original indictment asserted fraud in that both Canino and Raphael had work done on their private homes which was charged to the Parkview Towers project. Second, it was alleged that through a concern called Regional Funding & Development, fraud was perpetrated.

Regional Funding & Development was also a company controlled by Raphael and Canino. The fraud, and the proofs showed, went like this: A subcontractor would bid, a subcontractor would be told that his bid would be raised or inflated by a certain amount of dollars. He would then sign a contract with Regional Funding in which he agreed to pay Regional Funding for his services in the exact amount or in virtually the exact amount of the assertion of his bid. That money would be paid by the [56] subcontractor to Regional Funding.

The third element of the fraud in this case concerned a very unlikeable character named George Protter. It was alleged that Mr. Protter, as an insurance broker, procured insurance on the project. He would inflate the premiums and kick back the amount of the inflation to Raphael and Canino.

The government sought initially to try to prove that concealment of the existence of Regional Funding & Development was in itself a crime. I did not allow that.

The major testimony concerning the concealment of Regional Funding & Development came into this case with the testimony of accountants named Kalb and Mintz. Kalb, to my recollection, was the original accountant. He, however, had an interest in the project, as I think a limited partner. And, in any event, his interest, whatever it was, disqualified him as an accountant to make reports to the N.J.H.F.A.

A Mr. Mintz was substituted. And according to the evidence of both Mintz and Kalb, efforts of a considerable nature were made to keep Mr. Mintz from finding out about Regional Funding and Regional Funding as a corporation controlled by Raphael and Canino.

This, of course, the government argued, was an effort to hide Regional Funding both as to its existence [57] and as to its presence as a sub-subcontractor from the N.J.H.F.A.

Now, Mr. Mintz also testified that he questioned the defendants about the existence of related parties or corporations and very carefully was not told about Regional Funding.

It has now come to light that in an audit which apparently took place in 1976 by a Mr. John Hutcheson of the N.J.H.F.A., it was revealed in an audit of the books of A.J. Tenwood that A.J. Tenwood had made an interest-free loan to Regional Funding which was made and paid in the same year. That information was in the files of the N.J.H.F.A. And it's clear to me that if anyone thought about the matter, or had reason to think about

it, knowledge of that transaction would lead to the conclusion that there was a high probability, or a great potentiality that there was a relationship between Tenwood and Regional Funding. Interest-free loans between corporations normally would not take place unless there was some common control ownership or some relationship between them.

These work papers of Hutcheson, in which the loan was noted, were marked as exhibits by the government, and were available for the inspection of defense counsel virtually from the beginning of this case.

The Hutcheson papers, however, were never [58] introduced into evidence. The case was somewhat delayed, the indictment originally was returned in March of 1980, I believe. We had a trial scheduled for May or June. Mr. Raphael became seriously ill. We had him examined, it was clear he could not go on, he was in the hospital.

The case was adjourned to September of 1980. At that time Mr. Canino was seriously ill. He was in the hospital and had quadruple bypass surgery.

The case, I think, was scheduled for January 1981, at which time Mr. Raphael died and we finally got underway in March.

A superseding indictment was returned in October of 1980 adding the George Protter insurance fraud count. So there was plenty of time for counsel to go over these papers and discover this Hutcheson evidence.

Also, I think it's fair to charge Mr. Canino with knowledge of the fact of the audit of the Tenwood books by Hutcheson. And with the fact, or the probability that the existence of the Tenwood-Regional Funding loan would have been revealed by that audit, as it was.

It seems very clear to me that under the circumstances this evidence is by no means newly discovered, and the failure to bring it forth, if in fact there was a failure to bring it forth, was due to a lack of diligence on the part of the defense in the preparation of this case.

[59] For those reasons I cannot treat this evidence as newly discovered.

The other tong or focus of the defense's argument is that the failure of the government to bring to the defendant's attention this allegedly exculpatory material was a violation of the government's obligation under the Brady and Agurs cases.

Brady v. Maryland reported at 373 U.S. 83, 1963, and United States v. Agurs, 427 U.S. 97, 1976. They are the basic Supreme Court cases concerned with the obligation of the government to reveal to the defendant any evidence in the government's possession which is exculpatory either as to guilt or punishment.

I think we can run by very briefly the government's obligations. The prosecutor is charged with the knowledge of material in his file whether he's read his file or not, or whether he knows that such material is in his file.

There was no demand for this material, or there was a general demand for Brady material. However, there was no specific demand for this particular material. But, nonetheless, if it falls within the ambit of Brady it seems to me that the government had an obligation to notify defense of it and bring it forth.

If it is Brady material, Brady evidence, it [60] has to be material to the defense case.

Now, let's analyze this a little bit.

There was an assiduous effort on the part of the government to prove that the existence of Regional Funding was hid from the N.J.H.F.A. And the Mintz and Kalb testimony brought that forth.

The existence of Regional Funding, per se, would do no harm. I mean, if the N.J.H.F.A. simply knew nothing more than that there was a concern called Regional Funding and Development that was acting as a subcontractor on this job, that without more does nothing harmful to the defense. It could have been owned by Joe Jones, or Timothy Smith for all one would know just knowing those bare facts.

What was harmful would be if the N.J.H.F.A. looked into the Regional Funding and found, as was easy to find, and as was not contested at trial, the fact that Regional Funding was controlled by Raphael and Canino and was related both to the owner, Parkview Towers, and the general contractor, A.J. Tenwood on this project. That I think itself would cause consternation, because one can readily realize the presence of various related parties working on a particular project would cause anyone paying for the project to suspect perhaps maybe something unethical or fraudulent is occurring.

[61] If the N.J.H.F.A. looked into it and looked into Regional Funding and what was actually going on as the proofs showed, i.e., that Regional Funding was being used as a conduit for fraud, there would have been a great deal of trouble as there later was when the federal indictment was returned.

The Hutcheson evidence, it seems to me, is in no way material to this case. As a matter of fact, it either has no effect on the case at all or it would have a detrimental effect on the case to the defense.

First, let's make the assumption that a defense counsel knows that the N.J.H.F.A. has buried in its files evidence of a 1976 or '75 interest-free loan from Tenwood to Regional Funding. That in itself provides a legitimate inference of a relationship between those two parties.

If the N.J.H.F.A. knows of that loan and infers that they are related companies, and also knows that Regional Funding is on the Parkview Towers project, then, of course the suspicions of N.J.H.F.A. are going to be aroused and it's going to look into it.

The fact that the N.J.H.F.A. knew or perhaps should have known, or had in its files information about Regional Funding and Tenwood, was all the more reason to keep the existence of Regional Funding and its presence on [62] this project away from the N.J.H.F.A.

Frankly, as a defense counsel in this case, had I known of it I would have stayed away from it like I would have stayed away from a rattlesnake or a cobra.

It could only bouce back and hurt me, not help me.

The evidence about the Hutcheson audit just simply has nothing to do with this case. To me the only logical thing that can be said about it is it provides all the more reason why the defense would want to keep knowledge of Regional Funding on this project as far away from the N.J.H.F.A. as possible.

Even if it had been brought forth by the defense to support the thesis that we didn't try to hide Regional Funding from the N.J.H.F.A., it seems to me it would have been neutralized, if not entirely overcome to the detriment of the defense by the argument that I have just made, i.e., since the defense had an idea that the N.J.H.F.A. knew about Regional Funding and A.J. Tenwood and their relationship, that was all the more reason why Kalb and Mintz, that the instructions of Canino and Raphael took great pains to prevent the N.J.H.F.A. from finding out about Regional Funding and its presence on this job.

This evidence either would have had no [63] effect whatsoever on this trial had it been adduced, or, as I think is most likely, would have had a decided detrimental effect on the defendant in this case.

For these reasons I will deny the motion for a new trial. Mr. Jacobs, will you present an order to me as promptly as possible?

MR. JACOBS: Yes, your Honor.

THE COURT: I presume that, Mr. Margulies, you will file an appeal from the denial and join it with the main appeal?

MR. MARGULES: Your Honor is correct.

MR. JACOBS: I have prepared an order.

THE COURT: I have signed the order. I'll instruct Mr. Towers to file it. We'll get you a conformed copy and you better file your appeal promptly.

MR. MARGULIES: Thank you, sir.

MR. JACOBS: Thank you, your Honor.

(Whereupon the matter stands adjourned.)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HON. H. CURTIS MEANOR

Docket No. 80-82

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES M. CANINO,
Defendant.

Criminal Action

MOTION FOR NEW TRIAL

[Filed Jan. 13, 1982]

TO: W. HUNT DUMONT, ESQ.
U.S. Attorney
970 Broad Street
Newark, New Jersey 07102

James M. Canino, by his undersigned attorneys, will appear before the Honorable H. Curtis Meanor, at the Federal Court Building, Newark, New Jersey, on February 22, 1982 and move the Court to enter an Order granting him a new trial herein on the record or afford an evidentiary hearing ancillary to this motion.

This motion is made on the grounds that there is newly discovered evidence of a material and an exculpatory nature which was in possession of the United States Attorney prior to and during the trial of this matter which the United States Attorney failed to disclose to the defendant in violation of the holding in *Brady v. Maryland*, 373 U.S. 83 (1963) and in violation of de-

fendant's right to due process. The evidence was not disclosed to the Court or jury; on the contrary the government argued and represented to the Court and jury facts repugnant to the facts known to the H.F.A. There was a manifest denial of justice. Relief is also predicated on either intentional concealment by the government or negligent non-disclosure of the material or such error on its part as to warrant a new trial.

Defendant will rely upon the files and records of this matter, and on the affidavits and brief submitted herewith.

MARGULIES & MARGULIES, P.A.
A Professional Corporation

By: /s/ Seymour Margulies
SEYMOUR MARGULIES
Attorneys for James M. Canino

Dated: January 13, 1982.

JJW/sr
Caninomo.script

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HON. H. CURTIS MEANOR

Docket No. 80-82

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES M. CANINO,
Defendant.

[Filed Jan. 13, 1982]

Criminal Action

AFFIDAVIT OF JAMES M. CANINO

STATE OF NEW JERSEY)
) ss
COUNTY OF HUDSON)

JAMES M. CANINO, being duly sworn according to law upon his oath deposes and says:

1. I am the defendant in this matter.

2. Prior to my indictment in this matter I had the opportunity to review certain documents pertaining to the civil matters with the State of New Jersey. Because there was a Federal investigation, the U.S. Attorney's office was present.

3. After the indictment I was allowed to review certain documents at the xerox office while they were being copied for use by the U.S. Attorney. This was so I could have copies made for myself of document I deemed necessary. I spent two full days reviewing and listing documents.

4. Between February 1, 1981 and March 10, 1981, I went to the office of the U.S. Attorney to review further documents on about five occasions. On these occasions I was required to particularize my document request and if the request was not made the day before my review I had to wait at least one hour for the document to be located and given to me. The reason given was that the documents were in possession of the F.B.I. and took up an entire room.

5. According to my best recollection and estimation, I reviewed over 60,000 documents. I have no recollection of having been shown exhibits in the 11000 or 12000 series. When the fact that the audit contained reference to Regional came to my attention after Mr. Margulies requested that my accountant make a specific search of 11501 so that he could explain 11501 to him, I was shocked. I had no consciousness or awareness prior to that revelation that any audit revealed the existence of Regional. The reason for my surprise was that the government had taken a position throughout that the matter had been concealed from them.

6. I knew that in fact I never concealed anything. I knew that all my books and records had been made available. In retrospect, I should not have been surprised to find an entry which was in the auditor's material and should have been there. Locating those sheets very realistically can be analogized to finding a needle in a haystack.

7. For trial preparation purposes I obtained copies of lists of pre-marked exhibits. The lists were extremely long. There were literally 60 pages on long size sheets just enumerating by some conclusory form the identity of the documents. The documents themselves were so voluminous that they filled many, many boxes and file-drawers. To attempt to go through each of them would be a Herculean and enormously time consuming undertaking. In fact, the matter was handled in a somewhat

disorganized fashion in that among other things, there were substituted exhibit page sheets issued from time to time on which added documents would appear. Although the document numbers were loosely cataloged, the related documents were not necessarily put in proximity to each other nor always given the same catelog number.

8. I tried to be very diligent in seeking to examine and obtain copies of all things that I thought might even remotely relate to me. It never occurred to me that the government was in possession of work sheets of the H.F.A. auditor that disclosed on their face the existence of Regional Funding.

/s/ James M. Canino
JAMES M. CANINO

Sworn to and subscribed before me
this —— day of January, 1982.

/s/ Susan Ranski
SUSAN RANSKI
Notary Public of New Jersey
My Commission Expires Dec. 9, 1982

JJW/sr
01/11/82
jamesaf.script

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HON. H. CURTIS MEANOR

Docket No. 80-82

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES M. CANINO,
Defendant.

[Filed Jan. 13, 1982]

Criminal Action

AFFIDAVIT

STATE OF NEW JERSEY)
) ss
COUNTY OF HUDSON)

HYMAN WOLBORSKY, being duly sworn according to law, upon his oath deposes and says:

1. I am a C.P.A. and am the assistant secretary and controller of Parkview Management Co.

2. I have reviewed the work papers of J. Hutcheson, the auditor employed by the New Jersey Housing Finance Authority who audited the Parkview Towers project on behalf of the N.J. H.F.A. These documents were recently revealed to me and were marked as Government's exhibit 11501 for the trial of James M. Canino.

3. My review of the documents indicates to me that they were prepared during an audit between April 20,

1976 and May 3, 1976. This is determined from the dates indicated on the work papers as well as cross-referencing dates of requisitions appearing in the documentation.

4. From my review of the work papers of Mr. Hutcheson, it is my opinion as an accountant that Mr. Hutcheson was aware of the existence of Regional Funding since reference to Regional Funding is made on numerous occasions in his work papers and that he was further aware that Regional was a related party to A. J. Tenwood Associates and to Parkview Towers. This opinion is made from review of documents entitled "A. J. Tenwood Associates, Inc. Cash Disbursements and Cash Receipts", (Exhibit A annexed hereto). On this document there are three columns. The first for Parkview Towers, the second for Excell Properties Corp. and the third for Regional. Reference to the second cash disbursements page (Exhibit B annexed hereto) indicates loans to Alvin Raphael and James Canino. Although there were only a small amount of transactions listed, Mr. Hutcheson deemed it proper to provide a separate column for Regional Funding. In my experience as an accountant, this leads me to believe that the column was set up for Regional because it was a related entity and of some relative importance.

5. I should further note that a separate reconciliation regarding the Regional account was made by Mr. Hutcheson. My review of the entities and individuals for which separate reconciliations were performed further supports my conclusion that Mr. Hutcheson was aware of the status of Regional as a related party since such reconciliations were done only for entities and individuals to whom and from whom funds were controlled by Canino and Raphael. These were, in fact, related parties. Other entities for which reconciliations were not done were

not owned by Canino or Raphael and for which they had only limited control over funds.

/s/ Hyman Wolborsky
HYMAN WOLBORSKY

Sworn to and subscribed
before me this 11
day of January, 1982

/s/ Susan Ranski
SUSAN RANSKI
Notary Public of New Jersey
My Commission Expires Dec. 9, 1982

JJW/sr
01/11/82
Caninoaf.script

CUMMINS, DUNN, HOROWITZ & PASHMAN
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(201) 489-1500

Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Criminal No. 80-82

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES M. CANINO,
Defendant.

[Filed Jan. 13, 1982]

AFFIDAVIT OF DONALD HOROWITZ IN SUPPORT OF MOTION FOR NEW TRIAL

STATE OF NEW JERSEY)
) ss:
COUNTY OF BERGEN)

Donald Horowitz, being duly sworn according to law, upon his oath deposes and says:

1. I am an Attorney At Law of the State of New Jersey, a partner in the firm of Cummins, Dunn, Horowitz & Pashman, attorneys for defendant Canino in the captioned matter, and am personally responsible for the handling of this matter for the firm.

2. I have represented Alvin Raphael and James M. Canino and various corporate entities in which they either had an interest and/or served as officers and/or em-

ployees, since the commencement of the joint federal/state investigation in January 1979. Upon the return of the captioned indictment in March 1980, I became, with leave of Court, the attorney of record for defendant Alvin Raphael, and another lawyer became attorney of record for defendant James M. Canino. Upon Mr. Raphael's death I, again with leave of Court, became the attorney of record for Mr. Canino.

3. I was fully involved in the pre-trial proceedings, including discovery, on behalf of Messrs. Raphael and Canino, and was the trial attorney for Mr. Canino.

4. I have reviewed the documents annexed to the Affidavit of Seymour Margulies, Esq., which documents appear to be copies of workpapers of a New Jersey housing finance agency auditor, a Mr. J. W. Hutcheson.

5. At no time during the pre-trial proceedings or during the trial itself did I ever see these documents nor were the contents of them made known to me by the United States Attorney, his Assistants, or the various Investigative Agents assigned to the matter. The first time I saw these documents and their existence made known to me was on December 31, 1981 at which time these documents, or copies thereof, was presented to me for review by Mr. Margulies.

/s/ Donald Horowitz
DONALD HOROWITZ

Sworn to and subscribed
before me this 11th day
of January 1982.

/s/ Alice O. Boas
ALICE O. BOAS
Notary Public of New Jersey
My Commission Expires July 1, 1984

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HON. H. CURTIS MEANOR

Docket No. 80-82

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES M. CANINO,
Defendant.

[Filed Jan. 13, 1982]

Criminal Action

AFFIDAVIT

STATE OF NEW JERSEY)
) ss:
COUNTY OF HUDSON)

SEYMOUR MARGULIES, being duly sworn according to law, upon his oath deposes and says:

1. I am an Attorney at Law of the State of New Jersey and am presently representing the defendant, James M. Canino in criminal proceedings pending in the United States Court of Appeals for the Third Circuit as well as before this Court.

2. Because of this representation I am also collaterally involved with Mr. Canino in certain civil litigation now ongoing in which Mr. Canino and the government are parties. In such capacity I had occasion to be present in the office of the United States Attorney for discovery proceedings in the civil matter on or about December 14,

1981. I appeared with Mr. Stern of Mr. Kaps' office. They represent Canino in the civil suit.

3. During such discovery proceedings, I requested three documents. I asked to examine the original of the requisition file, copies of which I had seen but the original of which I had not seen. I asked for the final cost certification copy of which I had seen but the original of which I had not seen. In connection with the cost certification I also specifically asked for any H.F.A. audit. I had access to the exhibit list and was told that the audit had a particular exhibit number. I asked for it by number.

4. I since learned that there are three exhibit numbers dealing with the audit. I went through some of the exhibits with Mr. Canino's accountant. I asked him questions about the requisition, about the cost certification and generally about the audit. The conversations were extremely brief. I asked the accountant to go through the audit since he would know better from his accounting background what was in it than I would and I wanted him to let me know if there were any references in the audit that indicated the existence of Regional.

5. I asked the fellow who was making copies to make me a copy of excerpts from the audit consisting of the instructions to the auditor and I took them with me when I left. I learned from Mr. Canino shortly thereafter that his accountant indeed had found references to Regional and I asked that I be supplied with a copy of the whole audit file.

6. I subsequently asked the accountant to check the other two exhibit numbers which identify the H.F.A. audit and was told that the other exhibit numbers contained no reference to Regional.

7. When I was given exhibit 11501 in the U.S. Attorney's office, I was informed that this exhibit number was

given to the document by the U.S. Attorney in preparation for the criminal trial of Mr. Canino.

8. A review of the documents indicates, on those pages which I have taken the liberty of marking, clear reference to Regional Funding.

/s/ Seymour Margulies
SEYMOUR MARGULIES

Sworn to and subscribed
before me this ———
day of February 1981

/s/ Susan Ranski
SUSAN RANSKI
Notary Public of New Jersey
My Commission Expires Dec. 9, 1982

JJW/sr
12/31/81
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